STATE OF MICHIGAN

COURT OF APPEALS

IDA M. JEWETT,

Plaintiff-Appellant,

v

WILLARD GOODMAN,

Defendant-Appellee.

UNPUBLISHED
June 12, 2008

No. 278014
Tuscola Circuit Court
LC No. 05-023249-NO

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals as of right from the trial court order granting summary disposition in favor of defendant pursuant to MCR. 2.116(C)(10). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises from an incident in which plaintiff slipped and fell as she exited her daughter's rental home through a side door. There were only two entrances in the rental home—a front entrance, which had lighting, and a side door, which did not have any lighting. Plaintiff had been to the rental home about eight times before the incident and had exited through the side door twice. Plaintiff testified at her deposition that she missed the single step connecting the side door porch with the ground because it was dark. According to plaintiff, she was aware that the side door exit was dark, but went through it anyway because it was closer than the front entrance.

Plaintiff noted that she was warned by her daughter to watch her step before she walked out the door. Plaintiff missed the step and fell to the ground. Plaintiff's daughter testified at her deposition that there was a light over the side door exit but it did not work. The daughter had requested that defendant fix the light prior to the incident, but he allegedly responded that the wiring was bad and it would cost too much money to fix.

Plaintiff filed this premises liability suit, and defendant thereafter moved for summary disposition. The trial court granted defendant's motion, ruling that (1) the condition was open and obvious and (2) defendant did not have a statutory duty to install lighting under MCL 554.139 because the local unit of government of Cass City, Michigan, did not impose such a duty.

This Court reviews de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(10). *Liberty Mut Ins Co v Michigan Catastrophic Claims Ass'n*, 248 Mich App

35, 40; 638 NW2d 155 (2001). When deciding a motion for summary disposition, a court must consider the entire record in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

Plaintiff asserts that the statutory requirement of MCL 554.139 imposed a duty on defendant to protect her from injury caused by disrepair of the premises. We disagree. In *Mullen v Zerfas*, 480 Mich 989, 989-990; 742 NW2d 114 (2007), our Supreme Court recently held:

> The Court of Appeals in *O'Donnell v Garasic*, 259 Mich App 569[; 676 NW2d 213 (2003)], erred by indicating that MCL 554.139(1) establishes a duty on the part of owners of leased residential property to invitees or licensees generally. The covenants created by the statute establish duties of a lessor or licensor of residential property to the lessee or licensee of the residential property, most typically of a landlord to a tenant. By the terms of the statute, the duties exist between the contracting parties. The defendant landlord did not have a duty under MCL 554.139(1) to the plaintiff, a social guest of the tenant.

Because plaintiff was not a lessee or licensee of the residential property, defendant did not owe her a duty of reasonable repair under MCL 554.139. Whether the trial court erred in granting summary disposition to defendant must be reviewed solely under common law premises liability principles. See *Mullen*, *supra* at 990.

In a premises liability action, a plaintiff must prove the elements of negligence. To establish a prima facie case of negligence, a plaintiff must prove four elements: "(1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages." *Benton v Dart Properties Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006), citing *Taylor v Laban*, 241 Mich App 449, 452; 616 NW2d 229 (2000). The duty that a landlord owes a plaintiff depends on the plaintiff's status on the land. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). "The status of a person on land that the person does not possess will be one of the following: (1) a trespasser, (2) a licensee, or (3) an invitee." *Hampton v Waste Mgt of Michigan, Inc*, 236 Mich App 598, 603; 601 NW2d 172 (1999).

An invitee is one who enters the land of another for a commercial purpose on an invitation that carries with it an implication that reasonable care has been used to prepare the premises and make it safe for the invitee's reception. *Stitt*, *supra* at 596-97. An owner "owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). Here, there is no dispute that plaintiff was an invitee on the premises.

Absent special aspects, a possessor of land generally has no duty to safeguard invitees or licensees from conditions that are open and obvious. *Id.* at 516-517. In examining whether a risk of harm is open and obvious, the question is whether an average person of ordinary intelligence would have been able to discover the danger and the risk presented upon casual inspection. *Novotney v Burger King Corp*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

In the case at bar, the evidence established that plaintiff was aware the risks of exiting the rental home through the dark side door. Plaintiff knew there was a step outside the side door because she had been to the rental home eight times previously and had exited through the side door twice. She also was aware of the dark condition because as she was leaving she commented, "Gosh, it's awful [sic] dark here." And before stepping outside, plaintiff's daughter cautioned her to watch her step. Finally, there is no indication in the record that plaintiff was prevented from exiting via the lighted front entrance, which she had used when entering the home. Therefore, plaintiff loses on the question of open and obvious because reasonable minds could not differ regarding the open and obvious risk associated with exiting the side door in the dark.

Affirmed.

/s/ Alton T. Davis
/s/ Christopher M. Murray
/s/ Jane M. Beckering